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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/693,084 | 10/19/2000 | Kenneth B. Trauner | P1-15 | 7795 |

7590 10/22/2003
John P. Wooldridge
1334 Ridgestone Court
Livermore, CA 94550

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| EXAMINER |
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CROSS, LATOYA I

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| ART UNIT | PAPER NUMBER. |
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1743

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/693,084

Applicant(s)

TRAUNER ET AL.

Examiner

LaToya I. Cross

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8-1-03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1, 3-13, 15, 17-42, 44, 45 and 47 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☐ Claim(s) 1, 3-13, 15, 17-42, 44, 45 and 47 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to Applicants' amendment filed on August 1, 2003 and entered as paper No. 7. Claims 1, 3-13, 15, 17-42, 44, 45 and 47 are pending. All previous rejections from the Office Action dated March 27, 2003 are withdrawn in view of the following new grounds of rejection.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3-5, 8-31, 34, 36-38, 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,062,126 to Johnson et al in view of US Patent 5,614,718 to Brace.

Johnson et al teach a beverage quality control apparatus. The apparatus includes a sensor configured to be in thermal communication with the beverage and to detect attainment of a predetermined temperature. The apparatus also includes an indicator coupled to a timer, configured to indicate to the user the status of the timer and thus, the quality of the beverage. See abstract. The quality control apparatus is designed to fit within a beverage container (col. 2, lines 54-65). The sensor is in thermal communication with the beverage in the container, such that heat energy from the beverage is transferred directly or indirectly to the sensor. Alternatively, the sensor may be situated within the container, itself (col. 3, lines 16-23). The indicator may include a visual display, such as an LCD display (col. 3, lines 3-4). The sensor may be coupled to a controller suitable to link the sensor, timer and indicator. The sensor may also be covered by a protective covering (col. 3, lines 23-28).

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At col. 2, lines 61-65, Johnson et al teach that the quality control apparatus may be used on any container holding any beverage. However, Johnson et al fail to teach determining the quality of the beverage by measuring the absorption properties of the wine.

Brace teaches evaluating the quality of beverages, where the chemical constituents of the wine are determined using the spectrum data. Specifically, the beverage container is subjected to spectral analysis using NIR transmission to acquire information in the form of spectral signatures, which are analyzed for qualitative features that allow accurate classification of the material in the container. At col. 4, lines 25-31, Brace teaches that the information provided through the spectroscopic analysis is indicative of absorption bands in the near infrared and allows quantifying the concentration or pressure of specific gases within the analysis container, which includes measurement of the head space gas concentrations to determine carbonation loss rate.

It would have been obvious to one of ordinary skill in the art to measure the quality of a beverage in the apparatus of Johnson et al by measuring the absorption properties of the wine to determine the quality of the wine. Where the quality control apparatus is incorporated into the wine container itself, as suggested by Johnson et al, the user will be able to determine the quality of wine without opening the bottle. The absorption spectrum of the wine is advantageous in that it will allow the user to determine properties such as carbonation loss rate.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 USC 103 in view of the teachings of Johnson et al and Brace.

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3. Claims 6, 7, 24, 32, 33, 35, 41, 42, 44, 45 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al and Brace as applied to claims 1-5, 8-15, 24, 31, 34 and 36-38 above, and further in view of US Patent 5,969,606 to Reber et al.

The disclosures of Johnson et al and Brace are described above. Neither reference teaches sensing data selected from alcohol, sugar, pH, etc. as recited in claim 7, 33 and 35. Further, neither reference teaches a microprocessor or an external computer.

Reber et al teach a sensor that senses a condition of a food item within a container. The food item may be a liquid food item such as fruit juices, milk, etc. The sensor is one that senses humidity, temperature, food quality, or acidity (pH). A signal is communicated from the sensor to an electronic tag and in turn to an indicator. The indicator provides either an audible or visual indication of the condition of the food item. See col. 3, line 32 – col. 4, line 4. A processor, which may be in the form of a microprocessor, is used to communication information between the sensor and the electronic tag (col. 6, lines 1-9). A receiver and transmitter are coupled to the processor to transmit information regarding the condition of the food for external readings (col. 6, lines 16-20).

It would have been obvious to one of ordinary skill in the art to include a sensor capable of sensing pH into the device of Johnson et al to allow the user to determine the acidity of the beverage and in turn determine the quality of the beverage. Further, it would have been obvious to one of ordinary skill in the art to use a microprocessor to transform information into a form comprehensible by the user and further download the information into an external computer for storing the result for later use.

With respect to claims 42, 44, 45 and 47, Reber et al teach that the sensor can be integrated with the cover of the food container. It would have been obvious to one of ordinary

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skill in the art to use sensor in the cork of wine containers because it is known in the art that the presence of chemicals such as those recited in claim 44 in corks can affect the wine quality.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 USC 103, in view of the teachings of Johnson et al and Brace and further in view of Reber et al.

Response to Arguments

4. Applicant's arguments with respect to claims 1, 3-13, 15, 17-42, 44, 45 and 47 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 703-305-7360. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

This Art Unit is tentatively scheduled to move on December 16, 2003. If Applicants are unable to reach the Examiner at the above mentioned phone numbers during the month of December, Applicants should attempt to reach the Examiner at new phone number (571) 272-1256 or the Examiner's supervisor at (571) 272-1267.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in cursive script that reads "LaToya Cross".

LaToya Cross
Patent Examiner
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October 20, 2003